Inspiring Greatness
INDEPENDENCE SCHOOL DISTRICT

Business/Marketing Virtual Learning

10-12 grade Business Law

May 18, 2020

Lesson: [May 18, 2020]

Objective/Learning Target:

Legal Purpose and Proper Form

Identify various forms of unenforceable illegal agreements.

Let's Get Started

Watch This Video:

[Illegal Agreements]

Illegal Agreements

Agreements that involve contracting for an illegal act generally are void and unenforceable. For example, almost any agreement to commit a felony (a serious crime) will be an illegal agreement. Examples of the most frequently encountered types of illegal contracts are discussed next.

1) **Illegal Lotteries -** Most states either forbid or regulate gambling. Usually they have statutes which, in general, make gambling agreements, typically termed illegal lotteries, void. A **lottery** has three elements: a prize (something of value for one or more winners), chance (the winner determined solely by luck), and consideration (a payment is required to participate). A **wager**, one of the most common forms of gambling, is a bet on the uncertain outcome of an event.

2) **Agreements to Pay Usurious Interest -** Lenders of money may not charge more than a specified maximum rate of interest. This maximum interest rate varies among the states, and 18 percent is a common maximum. Lending money at a rate higher than the state's maximum allowable rate is **usury**. Generally, the penalties specified by these statutes vary. Typically, however, the borrower must repay the principal. Sometimes a person borrows money for which interest will be charged but no exact rate is stated. In such a case, the rate to be paid is the legal rate of interest(6%-15%), which is specified by state statute.

Illegal Agreements

3) **Agreements Involving Illegal Discrimination -** Some agreements are unenforceable because they violate anti-discrimination statutes. For example, an agreement between a motel chain and a local manager to not accept guests of a particular race or national origin would be unenforceable because it violates the federal Civil Rights Act of 1964. Agreements also may be illegal as violations of the Constitution. For example, a contract between a residential subdivision developer and a home buyer providing that the buyer would not sell to a member of a particular race would be unenforceable because it violates the Fourteenth Amendment to the Constitution.

4) **Agreements That Obstruct Legal Procedures -** Agreements that delay or prevent justice are void. Examples include promises to:
   a) pay non-expert witnesses in a trial to testify, or pay for false testimony
   b) bribe jurors
   c) refrain from informing on or prosecuting an alleged crime in exchange for money or other valuable consideration. This is called **compounding a crime**.

   A court or prosecutor may make a penalty dependent upon a criminal's making restitution (for example, repairing a vandalized building). However, the victim may not make reporting a crime dependent upon restitution.

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5) **Agreements Made Without a Required Competency License -** All states require that persons in certain occupations and businesses pass exams and receive a **competency license** to ensure that they can perform adequately. Trades, such as barbers, plumbers, and electricians typically require a competency license. Professions such as physicians, teachers, lawyers, and pharmacists need competency licenses. Real estate brokers, insurance agents, and building contractors are subject to such regulation as well. Persons who lack the required competency license may not enforce the contracts they make in doing the regulated work. If the license is a **revenue license**, whose purpose is only to raise revenue rather than to protect the public, contracts made by the unlicensed person are valid. Generally the only penalty for failure to get such a license is a higher fee when the license is finally obtained.

6) **Agreements That Affect Marriage Negatively -** The law encourages marriage and family life by making agreements that harm or interfere with marriage unenforceable. For example, Mimi is an illegal immigrant and Bill is a U.S. citizen. It would be an illegal contract if Mimi agreed to pay Bill $5,000 in exchange for his promise to marry her so she could obtain citizenship. A father's promise to pay his daughter for not marrying would be unenforceable. It would be illegal for a boss to agree to pay her assistant money in exchange for his promise to divorce his spouse.

Illegal Agreements

7) **Agreements That Restrain Trade Unreasonably -** In a free market system, competition between suppliers produces the best goods and services for the lowest price. To preserve competition, **antitrust laws** have been enacted at the federal and state levels. The Sherman, Clayton, and Federal Trade Commission Acts are the foremost examples of these laws at the federal level. Their enforcement focuses on various forms of illegal behavior such as the formation of monopolies and other more subtle forms of anti-competitive behavior such as:

a) **Price Fixing -** When competing firms agree on the same price to be charged for a product or service, this injures consumers. It deprives them of the lower prices which competition would produce. **Price fixing** is a crime under federal law. Agreements to fix prices are unenforceable.

b) **Resale Price Maintenance -** Manufacturers may engage in a legal form of resale price maintenance if they merely identify to retailers a "suggested retail price." They may even refuse to sell to retailers who will not charge that amount and still be legally proper in so doing. However, manufacturers may not agree or contract with retailers to sell the product at a particular price because that would involve two parties fixing the price.

c) **Allocation of Markets -** The same injury to competition produced by price fixing can be achieved if competitors divide markets between themselves. This practice is known as allocation of markets. If dealers of a particular make of car in a state agree that they will not sell to residents outside the market area where their dealership is located, this eliminates competition and injures consumers. Agreements to allocate markets are illegal and unenforceable.

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8) **Agreements Not to Compete -** Although agreements not to compete, such as those that fix prices and allocate markets, generally are unenforceable, the law will uphold some that are a part of termination clauses in employment contracts. Although enforceable if they are properly constructed, these agreements become illegal if they are unreasonable in:

a) time period for the limitation
b) geographic area to which the limitation applies
c) employer's interest protected by the limitation

An agreement not to compete for 20 years would almost certainly be illegal as would an agreement not to compete anywhere in the United States. In contrast, an agreement not to engage in the printing business for a year in the market area where the former employer is located probably would be legal and enforceable. The employer's interests protected by the agreement not to compete must be significant. Trade secrets are the most commonly recognized employer interests.

ACTIVITY #31

1) Name four of the eight illegal agreements discussed here.

2) Razer agreed with several published articles that criticized laws prohibiting the production, possession, and use of marijuana. The authors of the articles claimed such legislation was unrealistic and often violated civil rights. Razer agreed so heartily that he bought several dozen marijuana plants from a friend, Sara. Then he rented a patch of isolated land and persuaded the owner, Tom, to accept a share of the proceeds from the sale of the anticipated crop as rent. After harvesting the first crop, Razer sold most of the product to a local drug dealer for $7,500.
   a) Were any of Razer's agreements illegal?

3) John was coming up for trial on felony charges. He paid the judge in the case $10,000 to make errors in conducting the trial so that John's conviction could be overturned on appeal. When the appeal failed, John sought to sue for restitution of the $10,000.
   a) Should he be allowed to recover the bribe?
   b) Why or why not?

ACTIVITY #31

4) A new boss was scheduled to take over Patty's department in three weeks. Patty agreed to pay Nancy $600 to remove unflattering information from her personnel file so she would look good to the new boss. The day before Nancy was going to do it, Patty called and told her not to. Nancy never took the information.
   a) If Patty had already paid Nancy, could she sue and recover her money?

5) Cliff worked as a site manager for an oil-drilling company. When a drill bit broke, he called Texas Bit Company, the only bit manufacturer in the area. Cliff told the salesperson that he had to have a replacement bit immediately as his company's drilling agreement with the landowner was about to expire. He then asked for a bit able to cut quickly through granite. The salesperson recommended their model 2123 which was described as a high-carbon steel bit with diamonds embedded on the cutting edges. The salesperson quoted a price that was triple what Cliff had purchased a similar bit for a few months previously. She also said there were no warranties and that the product was being sold, "as is." Although selling "as is" was an unusual practice in the drilling industry, the salesperson said Cliff could take it or leave it as they only had one in stock and demand was high. It turned out that the bit was made only of low-carbon steel and it cut very slowly.
   a) Is this agreement unconscionable?
   b) What would the court likely do if it found the agreement to be unconscionable?